they had accepted it. I accordingly came to the conclusion that the defendants were not entitled to any damages in respect of the first item of the counterclaim.

The second item of the counterclaim was for $11,868, being wages paid to 18 workers for 69 days at $172 a day while the defendants were allegedly waiting for bricks to be supplied by the plaintiffs. It seemed to me that this loss could have been avoided. I accepted the evidence adduced by the plaintiffs that it was the practice in the building trade for bricklayers and brick carriers to be sent away without pay if there was no work for them to do because of a lack of bricks. I accordingly came to the conclusion that the defendants were not entitled to any damages in respect of the second item of the counterclaim.

I held, however, that the defendants were entitled to recover nominal damages for breach of contract: 11 *Halsbury's* Laws of England, 3rd edition, page 220, para. 388. I accordingly awarded the defendants the sum of $10 as nominal damages. It seemed to me that, although the defendants were, in my opinion, not entitled to any damages in respect of the counterclaim, for reasons given above, the plaintiffs by their breach of contract had caused the defendants considerable inconvenience and unreasonably delayed the construction of the block of flats planned by the defendants, and should, therefore, pay the defendants the costs of the retrial and also the original trial of the counterclaim. And I accordingly made an order to that effect and directed that the costs be taxed on the lower scale.

Order accordingly.

Solicitors: *Chung & Co.; Drew & Napier.*

BHAGWAN SINGH v. CHAND SINGH

[O.C.J. (Buttrose J.) March 8, 1968]
[Singapore — Suit No. 2095 of 1965]

Practice and Procedure — Service by post — Whether summons sent by registered post at given address for service sufficient service — R.S.C. 1934, O. IX r. 14.

Practice and Procedure — Summary judgment — Validity of — Summons served by prepaid registered post — Default of appearance of plaintiff at hearing — R.S.C. 1934, O. XIV.

Tort — Trespass — Property seized under writ of seizure of sale — Validity of judgment.

The defendant (plaintiff in Suit No. 1099 of 1962) brought an action against the plaintiff for the recovery of money. The plaintiff having entered an appearance in person on September 13, 1962 to the writ, the defendant took out a summons under O. XIV of the R.S.C. on September 19, 1962 for leave to sign final judgment. A copy of the summons was sent to the plaintiff by prepaid registered post at his address for service on September 21, 1962 and this was returned to tht defendant's solicitors on October 5, 1962 as it still remained unclaimed. It was never in dispute that the plaintiff did not receive the summons and had no notice of the hearing. At the hearing of the summons on September 28, 1962 in the absence of the plaintiff final judgment was entered against him. On October 3, 1962 a writ of seizure and sale was issued by the defendant and the plaintiff's goods were seized. The plaintiff then applied on October 9, 1962 through his solicitor to set aside the "default judgment" and the writ of seizure and sale and an order to that effect was made and the plaintiff was given leave to defend the action on October 29, 1962. Later at the trial of the action the defendant's claim was dismissed with cost. Subsequently in an action by the plaintiff for damages *inter alia* for trespass to his property, the issue before the court was whether the plaintiff's non-receipt of the summons affected the validity of the judgment.

Held, dismissing the action: (1) O. IX r. 14 of the R.S.C. not only allows for the service of process by registered post, but also provided that "where service is made by registered post the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof." This additional factor coupled with the deliberate omission of the words "unless the contrary is proved" which appear in the definition of "service by post" in the Interpretation and General Clauses Ordinance make it clear that a summons in sufficiently served if it is posted in a prepaid registered envelope addressed to the plaintiff at his address for service;

(2) the judgment entered against the plaintiff was regularly and properly obtained and the writ of seizure and sale lawfully issued pursuant to the judgment.

Cases referred to:—

(1) *R.* v. *County of London Quarter Sessions Appeals Committee, Ex parte Rossi* [1956] 2 W.L.R. 800.

(2) *T. O. Supplies (London) Ltd.* v. *Jerry Creighton Ltd.* [1952] 1 K.B. 42.

(3) *R.* v. *Westminister Union Assessment Committee, Ex parte James Woodward & Sons* [1917] W.N. 28.

CIVIL SUIT.

M. N. Samy for the plaintiff.

S. K. Chan for the defendant.

Cur. Adv. Vult.

Buttrose J.: This is an action according to the endorsement on the writ for damages for trespass to the plaintiff's house and seizure of his property therein.

The facts which give rise to these proceedings are as follows:—

On the 29th August, 1962, the defendant issued a writ against the plaintiff (Suit No. 1099 of 1962) for the recovery of principal and interest due on a promissory note. On the 13th September, 1962, the plaintiff entered an appearance to the writ in person and gave his address as No. 130A Cecil Street, Singopore.

On the 19th September, 1962, the defendant took out a summons under Order XIV of the Rules of the Supreme Court for leave to sign final judgment against the plaintiff which was set down for hearing on the 28th September.

On the 22nd September, 1962, and six days before the hearing of the summons the plaintiff filed and delivered his defence and counterclaim in which he asserted, *inter alia,* that the amount due on the promissory note had been settled in full before the commencement of the action brought against him by the defendant.

It was never in dispute that the plaintiff never in fact had actual notice of the hearing of the summons and never received either a copy of the summons or of the affidavit in support thereof.

From an affidavit filed on behalf of the defendant it appeared that a copy of the summons and of the affidavit in support were sent by registered post on the 21st September, 1962, in a duly registered envelope addressed to the plaintiff at No. 130A Cecil Street, Singapore. It was also ascertained from the Postal Services Department that three unsuccessful attempts were made to deliver this registered article on the 22nd, 24th and 25th September, 1962, as the plaintiff, the addressee, was not in when the delivery postman called. The plaintiff's wife refused to accept the registered article and a request card was then sent to the addressee after the last call on the 25th September, 1962, to call at the General Post Office to collect it but as on the 5th October, 1962, it remained still unclaimed it was returned to the defendant's solicitors.

On the 28th September, 1962, the summons came on for hearing before the deputy registrar in the absence of the plaintiff.

The Order of the deputy registrar was as follows:—

"Upon the application of the abovenamed plaintiff" (i.e. the defendant in the present case) "made this day by summons-in-chambers No. 1063/62 and upon reading the affidavit of plaintiff filed herein on the 19th day of September 1962 and upon hearing the solicitor for the plaintiff and the abovenamed defendant," (i.e. the plaintiff in the present case) "not having appeared though duly served with the said summons and affidavit IT IS ORDERED that the plaintiff be at liberty to enter final judgment against the defendant for $1,755.62 being the amount claimed and endorsed on the writ of summons in this action together with interest on $1,000 at 20% per annum from the 28th day of August 1962 to the date hereof and $157.50 costs.

Dated this 28th day of September, 1962."

Pursuant to this order it was on the 29th September, 1962, adjudged that the defendant recover against the plaintiff the amount claimed with costs.

On the 3rd October, 1962, a writ of seizure and sale was issued directing the sheriff to levy against the plaintiff and on the 5th October the sheriff went into possession of the plaintiff's goods and chattels and seized them.

It was apparently then and then only for the first time that the plaintiff became aware of what had transpired. He at once consulted a solicitor with the result that Mr. L.A.J. Smith appeared for him and notified his appointment as such on the 9th October, 1962.

On the same date Mr. Smith on behalf of the plaintiff took out a summons to set aside "the default judgment" entered against the plaintiff on the 28th September, 1962, and the writ of seizure and sale issued on the 3rd October, 1962 and that the plaintiff be given leave to defend.

The summons came on for hearing before me on the 29th October, 1962, when I ordered that the judgment and writ of seizure and sale above referred to be set aside and that the plaintiff be given leave to defend the action on payment of costs. As far as I am able to recall the matter now I did so because the defendant appeared to me to have a triable issue on the merits and not because the judgment had been improperly obtained.

This order was not appealed from and the action proceeded to trial. The essential correctness of the order was amply demonstrated by the fact that Ambrose J. who tried the case dismissed the defendant's claim with costs. The defendant thereupon appealed to the Federal Court of Appeal who dismissed his appeal with costs. The plaintiff had won all along the line.

The present proceedings arose out of what was alleged by the plaintiff to be the unlawful seizure of his goods and chattels in pursuance of a judgment which was a nullity.

The plaintiff based his claim in trespass and also alleged a malicious abuse of civil proceedings.

The judgment however which the defendant obtained under Order XIV was not, in my view, a nullity but had been regularly and properly obtained. By virtue of Order IX rule 14 of the Rules of the Supreme Court the summons was sufficiently served as it was posted in a prepaid registered envelope addressed to the plaintiff at his address for service and that the time at which the summons so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

The words "unless the contrary is proved" which appear in the definition of "service by post" in the Interpretation and General Clauses Ordinance (Chapter 2) which was in force at the material time although now repealed by The Interpretation Act, 1965 (No. 10 of 1965) do not appear in rule 14 and the omission must be taken to be deliberate.

Denning L.J. in *R.* v. *County of London Quarter Sessions Appeals Committee, ex parte Rossi* [1] at p. 807 puts the matter in this way:—

"To sum up, when service of process is allowed by registered post, without more being said on the matter,

then if the letter is not returned, it is assumed to have been delivered in the ordinary course of post and any judgment or order by default on the faith of that assumption is perfectly regular. It will not be set aside except on payment of costs and showing of merits: see *T. O. Supplies (London) Ltd.* v. *Jerry Creighton Ltd.*(2) But if the letter is returned undelivered and nevertheless, notwithstanding its return, a judgment or order by default is obtained, it is irregular and will be set aside *ex debito justitiae*."

The important words are "when service of process is allowed by registered post without more being said on the matter" which was the case in *ex parte Rossi, supra,* and which distinguishes it from the present one.

In the case before me more was said namely that where service is made by registered post the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

This additional factor coupled with the palpable and deliberate omission of the words "unless the contrary is proved" make it clear, in my opinion, that the summons was sufficiently served within the meaning of the rule.

In *R.* v. *Westminster Union Assessment Committee, ex parte James Woodward & Sons* (3) a similar question arose in connection with the service of a notice increasing the rateable value of land. By section 65 of the Valuation (Metropolis) Act, 1869 notices may be served by post by prepaid letter addressed to the occupier, and, if sent by post shall be deemed to have been served and received at the time when the letter containing the same would be delivered in the ordinary course, and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and prepaid and put in the post. The occupier proved that he had not in fact received the notice. The court (Viscount Reading C.J., Ridley and Lush JJ.) held that the effect of the section was that when the posting of a prepaid notice properly addressed was proved the addressee must be taken to have received it.

It is true that in that case the words "and received" occur in the section but I do not consider that the addition of those words carries the matter any further but were merely inserted *ex abundanti cautela.*

In the result therefore I have come to the conclusion that the judgment was regularly and properly obtained and the writ of seizure and sale lawfully issued in pursuance of the judgment.

That is sufficient to dispose of the plaintiff's case in trespass but it appeared from his statement of claim that he was alleging a malicious abuse of civil proceedings.

In civil proceedings under certain circumstances, namely, those which involve an interference with liberty or property, or affect, or are likely to affect, reputation an action undoubtedly lies if those proceedings are undertaken maliciously and without reasonable and probable cause.

All that I need say on this aspect of the case is that the plaintiff has failed to discharge the onus of proof which lies upon him of proving malice and that the defendant acted without reasonable and probable cause nor can these matters be inferred from the surrounding circumstances.

In the light of my findings it is unnecessary to consider the question of damages except to say that the plaintiff's evidence on the subject was highly unsatisfactory to say the least of it and here again he has, in my view, failed to discharge the onus which lies upon him of proving them.

The plaintiff's claim therefore fails on all grounds and must be dismissed with costs and judgment entered for the defendant accordingly.

Judgment for the defendant.

Solicitors: *M. N. Samy; Braddell Bros.*

LING NAM RUBBER WORKS v. LEONG BEE & CO. (NO. 2)

[F.C. (Ong Hock Thye F.J., Raja Azlan Shah and Pawan Ahmad JJ.) March 14, 1968]

[K.L. — Civil Appeal No. X. 76 of 1966]

Practice and Procedure — Judgment — Reversal of — Repayment of amount of judgment — interest on.

Practice and Procedure — Judgment — Alteration of, before being entered — Slip rule — R.S.C. 1957, O. 28 r. 11.

In an action claiming damages for negligence by fire, the High Court at Johore Bahru awarded $87,135.82 to the respondents. The judgment was satisfied in full. On appeal, the judgment was reversed by the Federal Court ([1968] 1 M.L.J. 216). The respondents were ordered to repay the amount of the judgment. There was no express direction for the payment of interest on the sum. Before the order was passed and entered the appellants made an application for its amendment by the addition that interest be allowed on the amount to be repaid.

Held, granting the application: (1) an order pronounced by a judge can always be altered until such time as it has been drawn up, passed and entered, and when a judge has pronounced judgment he retains control over the case until the order giving effect to his judgment is formally completed;

(2) interest should be allowed on the amount to be repaid on the principle that "to refuse it would be tantamount to condoning and approving the unjust enrichment of the respondents to the extent that they had the use and benefit of moneys to which the appellants were justly entitled".

Cases referred to:—

(1) *In re Harrison's Share Under a Settlement* [1955] 1 Ch. 260.